



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1998

Ms. Roxann Pais
Assistant City Attorney
Office of the City Attorney
Criminal Law and Police Division
Municipal Building
Dallas, Texas 75201

OR98-1652

Dear Ms. Pais:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116954.

The Dallas Police Department (the "department") received an open records request for 240 offense reports. You contend that eleven of the requested reports are excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with various confidentiality statutes or common-law privacy.¹ We will discuss your arguments in turn.

You contend that because offense reports #0010191-C and #0491312-B both involve an injury to a child these two reports are made confidential pursuant to section 261.201(a) of the Family Code. We note that two other files you have submitted to this office in connection with this request, offense reports #0794775-B and #0761593-B, also pertain to the alleged sexual assault of a child. Section 261.201 of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

¹We note that although you did not request a decision from this office within the ten business days following the department's receipt of the open records request, to the extent that the confidentiality statutes that you raised or common-law privacy apply to the records at issue, you have made a compelling demonstration that the respective records may be withheld from the public. See Gov't Code §§ 552.301, .302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ).

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the department has adopted that would permit access to these four offense reports. Because the information at issue pertains to an investigation of the alleged assault of a child, this office concludes that the department must withhold these four offense reports in their entirety pursuant to section 261.201 of the Family Code.

You contend that the following offense reports are made confidential under former section 51.14(d) of the Family Code: #0013220-A, #0558934-A, #0029094-A, #0526796-A, and #0910232-A. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continues to be confidential under that section.² Because some of the offense reports submitted to this office pertain to

²See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

juvenile conduct that occurred in 1992, we conclude that these records are governed by section 51.14(d) of the Family Code and therefore must be withheld.

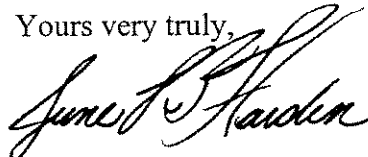
We note, however, that not all of the offense reports for which you raise section 51.14(d) may be withheld. After reviewing the records at issue, we conclude that offense reports #0013220-A and #0526796-A do not pertain to juvenile conduct. *See* Fam. Code § 51.02(2) (defining "child"). Consequently, these two offense reports must be released.

Finally you contend that offense reports #0570473-A and #0251062-A should be withheld from public disclosure because they relate to allegations of sexual assault. Section 552.101 of the Government Code protects information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and therefore any information tending to identify the assault victim should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983). We agree that common-law privacy protects portions of offense report #0570473-A and have marked this document accordingly. On the other hand, although offense report #0251062-A is the subject of an alleged sexual assault, it was later learned that in fact no assault took place and that the report was a falsehood. We therefore conclude that this offense report must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

Ref.: ID# 116954

Enclosures: Submitted documents

cc: Mr. Randy J. Spencer
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(w/o enclosures)